

EXHIBIT F

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DIVISION OF MONTANA
3 MISSOULA DIVISION

4 Cause No. CV-13-121-M-DWM

5 TAMARA DOWNEN, Individually and as Personal
6 Representative for the ESTATE OF STANLEY L. DOWNEN,
7 deceased,

8 Plaintiff,

9 vs.

10 MONTANA VETERANS' HOME; STATE OF MONTANA DEPARTMENT OF
11 PUBLIC HEALTH SERVICES; CITY OF COLUMBIA FALLS;
12 MIKE JOHNSON; and DAVID G. PERRY,

13 Defendants.
14
15

16 VIDEOTAPED DEPOSITION OF OFFICER GARY STANBERRY
17 November 25, 2013
18

19 Pursuant to Notice and the Federal Rules of
20 Civil Procedure, this deposition, called by Plaintiff, was
21 taken at 145 Commons Loop, Suite 200, Kalispell, Montana,
22 at 1:00 p.m., before Sheri J. Hazlett, Registered
23 Professional Reporter and Notary Public of the State of
24 Montana.
25

1 Q All right.

2 A That had been several years ago, though.

3 Q All right. Any other incidents that you can
4 recall at the VA home where you were confronted with a
5 patient that has Alzheimer's or dementia?

6 A Not that I know of. I mean there may have been
7 patients with that history, but I don't -- don't know.

8 Q Are you aware of any other situations in which
9 patients at the VA have been tased?

10 A Huh-uh.

11 Q That's a no?

12 A No, sir. Sorry.

13 Q That's okay. You were on duty the day that
14 Stanley Downen was tased, correct?

15 A Yes, sir.

16 Q Were you beginning your shift? Ending your
17 shift?

18 A My shift was just starting.

19 Q How did you first become aware of the call from
20 the veterans' home relating to Stanley Downen?

21 A I was dispatched to it --

22 Q Okay.

23 A -- by radio.

24 Q All right. And please recall for me any details
25 you can remember about that radio call coming in.

1 Q Okay. Regardless, you didn't have any
2 interactions with Stanley Downen prior to the tasing
3 incident that informed your approach as to how to deal
4 with him on that day?

5 A Correct.

6 Q Okay. Let's go ahead and just walk through the
7 events of what occurred. So my understanding is that you
8 were driving the police car on the way to the VA?

9 A Correct.

10 Q How long did it take you between the time you
11 left the station and arrival?

12 A Maybe two minutes.

13 Q Okay. Somewhere after receiving the call,
14 Officer Johnson went with you. How did that come about?

15 A I'm sure he heard it on the radio on his walkie,
16 because he came back and asked me if I wanted him to come
17 with me, and I told him it may not be a bad idea.

18 Q Okay.

19 A So he jumped in my car, and we took off.

20 Q All right. Was your vehicle equipped with video
21 equipment that day?

22 A It was, but it wasn't turned on yet.

23 Q Okay. Why not?

24 A We had to set it up, so this was more of a
25 priority call, so I just jumped in the vehicle and took

1 off. It takes approximately five minutes, if we're lucky,
2 to get it set up.

3 Q Okay. Are there typical times that you start
4 your shifts on any given day?

5 A We start at quarter 'til.

6 Q Quarter 'til what time?

7 A Your day shift it's 6:45 to 5:00 p.m., your mid
8 shift is 4:45 to 3:00 a.m., and then 8:45 to 7:00 p.m.

9 Q Okay. And you were coming on which of those
10 shifts?

11 A I was the 4:45-to-3:00-a.m. shift.

12 Q Okay.

13 A And Officer Johnson was the day shift, which was
14 the 6:45 to 5:00.

15 Q Aside from the details that you've relayed to me
16 about your conversation with Officer Johnson, is there
17 anything else that you two discussed before you left the
18 police department together?

19 A I have no idea.

20 Q Okay.

21 A He may have just told me what transpired
22 throughout the day, and I said go home and then the call
23 came out.

24 Q Do you recall any conversation between yourself
25 and Officer Johnson during the drive over to the VA?

1 A No.

2 Q Do you recall anything coming in through
3 dispatch or on your radio during the drive over to the VA?

4 A No, I don't recall the specifics on it.

5 Q Okay. So you drove in through the entrance gate
6 of the VA, right?

7 A Correct.

8 Q And how far down that entry drive did you go
9 before stopping the vehicle?

10 A In reference to feet or --

11 Q Feet, yards. Just how much distance was there
12 between the entrance gate and where you stopped the
13 vehicle?

14 A We were pretty much adjacent to the ball field,
15 so maybe -- I don't know.

16 Q Okay.

17 A It would be -- I'd be making a guess, and I
18 don't know.

19 Q Was it longer than -- was it farther than
20 20 yards into the VA --

21 A It was. It was longer than 20 yards, yes, sir.

22 Q Was it longer than 40 yards then?

23 A I would say so.

24 Q Was it as far as 100 yards?

25 A Probably not.

1 Q Okay. Did you have lights and siren on on
2 arrival?

3 A I don't recall.

4 Q Okay. What do you recall seeing outside of the
5 vehicle when you stopped?

6 A A male walking towards us with a group of five
7 individuals that surrounded him.

8 Q Okay. And where were those five individuals in
9 relation to that male?

10 A They had surrounded him.

11 Q Okay. That male was Stanley Downen?

12 A Yes.

13 Q How far away from Stanley were those five
14 individuals would you estimate?

15 A They maintained their distance. I mean they
16 were 10, 15, 20 feet or so behind him, so, you know, they
17 weren't real close.

18 Q And when you stopped the vehicle, were those
19 individuals behind Mr. Downen, between Stanley and the
20 VA -- the VA building, I mean?

21 A We were quite a ways from the actual building.
22 We were on the main drive into the building or into the
23 premises, but, yeah, they were between -- you know,
24 like -- like say here's the building here (indicating),
25 the roadway -- would you like me to draw you a little map?

1 Q And how long after you exited the vehicle did
2 that staff person mention something about a shield?

3 A That was pretty much immediate.

4 Q Okay. How far from you was that staff person at
5 the time?

6 A From myself?

7 Q Yes.

8 A I have no idea. I don't recall.

9 Q Did you draw your taser after you exited the
10 vehicle?

11 A No, sir.

12 Q Did you draw your taser at any time?

13 A No, sir.

14 Q How much time elapsed between the moment you
15 exited the vehicle and the time that Mr. Downen was tased?

16 A Probably within a minute or so.

17 Q Okay. And did you say anything to
18 Stanley Downen during that minute-or-so time period?

19 A Just tried to get him to drop the rocks.

20 Q Okay. And what do you recall saying to
21 Mr. Downen?

22 A I don't recall the specifics of what I said --

23 Q Okay.

24 A -- other than I know that we were trying to get
25 him to drop the rocks.

1 Q Okay. Did you say anything to the nursing staff
2 in that one minute or so of time after getting out of the
3 vehicle?

4 A I don't recall. I don't think I did.

5 Q Okay. Do you recall anything, other than drop
6 the rocks, that you said to Mr. Downen?

7 A No.

8 Q Okay.

9 A Not at -- not prior to being tased.

10 Q Okay. Did you see Officer Johnson draw his
11 taser?

12 A Yes.

13 Q Okay. Did you say anything to Officer Johnson
14 at any time prior to the tasing?

15 A I don't think so.

16 Q Okay. What did Stanley Downen say to you prior
17 to the tasing, if anything?

18 A Well, he was -- he was doing a lot of cursing.

19 Q Okay.

20 A He was using the F word a lot.

21 Q Okay.

22 A It wasn't -- I don't believe it was geared
23 towards any one individual. I think it was just a
24 blanket. He was extremely, extremely angry.

25 Q Okay. What do you recall of Mr. Downen's

1 A One dart struck his left bicep area --

2 Q Okay.

3 A -- and the other his left pants pocket.

4 Q Okay. What position was Mr. Downen's body in in

5 relation to Officer Johnson when the taser was deployed?

6 A I don't know.

7 Q Okay.

8 A I mean he was -- they were looking at each

9 other, obviously --

10 Q Okay.

11 A -- but I didn't see it.

12 Q Did you see Mr. Downen fall?

13 A Yes.

14 Q Okay. And, please, describe that fall.

15 A He stiffened up and just (indicating), just

16 fell, just went over.

17 Q Okay. Did he fall towards Officer Johnson?

18 A No. I believe he fell towards his right or on

19 his right.

20 Q Okay. Did you hear his head hit the pavement?

21 A You know, I believe I did.

22 Q Okay.

23 A Either it was his head or his chest, so.

24 Q Okay.

25 A But I do recall hearing something, hearing a

1 thud.

2 Q Okay. Did you hear anything else after
3 Mr. Downen hit the pavement?

4 A Cursing.

5 Q Okay. How soon after he hit the pavement did
6 you hear cursing?

7 A Like immediate.

8 Q Okay. How long did it take Mr. Downen to fall?

9 A A second, two seconds. I don't -- or maybe even
10 less than a second.

11 Q Okay. What did you do in response?

12 A There was nothing I could do. I wish I could
13 have ran over and caught him, but there was too much
14 distance.

15 Q Did you expect Officer Johnson to use his taser
16 on Mr. Downen?

17 A I have no idea.

18 Q Were you surprised by it?

19 A I don't know.

20 Q Okay.

21 A I mean there was a definite threat there.

22 Q Okay. Would you consider any of the rocks that
23 Stanley Downen was carrying to be weapons?

24 A Oh, most definitely.

25 Q Okay. And please describe why.

1 A If you get hit upside the head with one of those
2 rocks, it could kill you or seriously incapacitate you.

3 Q Okay. Have you ever been hit by a rock in the
4 line of duty before?

5 A No.

6 Q Prior to the time that Mr. Downen raised his
7 arm, were you prepared to -- did you anticipate arresting
8 Mr. Downen?

9 A No. It wasn't our initial call. We were hoping
10 to get him back into the nursing home, get him calmed
11 down, maybe get medication on board.

12 Q Did you arrest Mr. Downen?

13 A I didn't arrest him. I mean he was initially
14 going to be charged with disorderly conduct, but those
15 charges were dropped.

16 Q Okay. Who dropped those charges?

17 A They were never filed, so.

18 Q Okay.

19 A I think in light of the situation, it was
20 determined that we not file charges.

21 Q Was the call to the VA center a welfare check?

22 A No, sir.

23 Q Okay.

24 A It was a disorderly subject.

25 Q Who placed the restraints on Mr. Downen?

1 stopped when you got out of the police car?

2 A Maybe for a second or two, then proceeded to
3 walk and stop and walk and stop.

4 Q And during that process where he was walking and
5 stopping and walking and stopping, did it seem like any of
6 his movements were planned or deliberate in your mind?

7 A No. He was just wandering aimlessly.

8 Q In your mind how much did Mr. Downen weigh, if
9 you had to estimate it?

10 A Maybe 170.

11 Q Okay. And how tall?

12 A Maybe almost 6 foot.

13 Q And the day that this occurred, approximately
14 how much did you weigh?

15 A Probably 185 pounds.

16 Q Okay.

17 A 180.

18 Q And how tall are you?

19 A About 6 foot, 6-1.

20 Q Okay. After Mr. Downen was tased, did you have
21 any conversation with the nurses on the scene?

22 A I didn't know which ones were nurses, which ones
23 were nurse's aides or anything.

24 Q Sure.

25 A We wanted to get statements from everyone that

1 was there, which is what we did.

2 Q Okay.

3 A The statements were not completed immediately.
4 They actually went back to, you know, the nursing home and
5 completed them.

6 Q Did you give them written statements or forms
7 which --

8 A Forms, yes, sir.

9 Q Okay. How many of those forms did you give out,
10 to the best of your recollection?

11 A Per person?

12 Q In total. Just do you have any recollection --

13 A I have no idea. Everybody got probably two, you
14 know, two blank forms.

15 Q All right. Did you see witnesses at the scene
16 lined up along the baseball fence?

17 A I did. My focus wasn't on them, but I do recall
18 seeing people over there.

19 Q Okay. Can you recall approximately how many
20 there were?

21 A Absolutely not.

22 Q Do you recall any of those individuals saying
23 anything?

24 A No.

25 Q All right. Do you recall any of those

1 individuals calling out about what was going on to you or
2 the nursing-home staff?

3 A Huh-uh.

4 Q Is that a no? Sorry.

5 A It was a no, correct.

6 Q Okay. Did you go over to talk to anyone
7 standing at the baseball-field fence?

8 A No.

9 Q Okay. Did you learn at any time the identity of
10 any of the individuals standing at that fence?

11 A I did hear that someone had written a statement.
12 I don't know how the information was obtained, but that
13 was after the fact.

14 Q Okay.

15 A Actually that was just recently.

16 Q Have you ever read that statement?

17 A I did read it, yes.

18 Q And did you have any impressions about that
19 statement?

20 A The statement was wrong.

21 Q Okay. In what respect was that statement wrong?

22 A He -- in reference to Mr. Downen, he actually
23 reeled his arm back as if to throw the rocks. This
24 statement from this individual stated that he didn't do
25 that.

1 A Of the unit.

2 Q Of the unit?

3 A Yes, sir.

4 Q And I take it you're not wearing --

5 A I'm not wearing one.

6 Q Okay.

7 A I'm not recording this.

8 Q No problem. After Mr. Downen was tased, how
9 long did he remain on scene?

10 A Mr. Downen?

11 Q Yes.

12 A Until he was transported by ambulance.

13 Q About how long of a period of time was that?

14 A Maybe 15, 20 minutes. I don't have an exact
15 time frame for you.

16 Q That's okay. Approximately 15 to 20 minutes?

17 A After he was -- after he was tased,
18 Officer Johnson notified dispatch of taser deployment and
19 requested EMS, which is emergency medical services,
20 requested an ambulance immediately.

21 Q Okay.

22 A It's probably going to take the ambulance
23 10 minutes to get there.

24 Q Okay. And assuming that the ambulance took
25 approximately that amount of time to arrive, how long was

1 **EMS on scene before transporting Mr. Downen?**

2 A Maybe 15, 20 minutes.

3 Q Okay.

4 A That information can be obtained through
5 dispatch as well.

6 Q Okay.

7 A I don't have it.

8 Q That's okay. After Mr. Downen left in the
9 ambulance, how long did you remain on scene?

10 A Well, I spoke with the -- you know, the staff,
11 gave them statements, wanted to get their statements.
12 Maybe 15 minutes, something like that.

13 Q Do you have any independent recollection of what
14 any of those nursing-home staff said to you at the time,
15 other than what they recorded in their statements?

16 A No, I don't.

17 Q You chose not to draw your taser, correct?

18 A Correct.

19 Q Why not?

20 A Well, after I saw Officer Johnson had taken his
21 taser out, my goal -- I mean this is -- it was a -- just a
22 thought was there are enough of us there, I was hoping
23 that we could get together, try to coordinate something
24 where we can just kind of rush in, grab the rocks, but
25 that just -- it didn't happen. The incident occurred way

1 too fast --

2 Q Okay.

3 A -- you know, before there was any way, you know,
4 to communicate with the staff and try to do that.

5 Q Okay. Was there any consideration to just
6 backing away for a moment, just backing away from
7 Mr. Downen?

8 A No.

9 Q Why not?

10 A We were there to de-escalate the situation. He
11 was close to the ball field, we know that. He was just
12 wandering aimlessly with the rocks, so he was a threat,
13 you know, to the people over at the ball field, he was a
14 threat to the staff, and if he gets out on the road, he
15 himself could be harmed.

16 Q Okay. How many seconds elapsed between
17 Stanley Downen drawing back his arm indicating he was
18 going to throw the rocks and the taser darts entering his
19 body?

20 MS. PRINZING JONES: Objection, calls for
21 speculation.

22 A It just seemed like seconds.

23 Q (BY MR. DUERK) Okay.

24 A It was almost immediate.

25 Q Okay. And I think I heard you right before, but